U.S. Department of Labor

Board of Alien Labor Certification Appeals
1111 20th Street, N.W.
Washington, D.C. 20036

DATE:JAN 13 1989
CASE NO. 87-INA-569

IN THE MATTER OF

VENTURE INTERNATIONAL ASSOCIATES, LTD.
Employer

on behalf of

JOHN CHARLES THOMPSON
Alien

BEFORE: Litt, Chief Judge; Vittone, Deputy Chief Judge; and Brenner, DeGregorio, Guill, Schoenfeld, and Tureck, Administrative Law Judges

Nicodemo DeGregorio
Administrative Law Judge

DECISION AND ORDER

The above-named Employer requests review pursuant to 20 C.F.R. § 656.26 of the United States Department of Labor Certifying Officer's denial of labor certification application. This application was submitted by the Employer on behalf of the above-named Alien pursuant to Section 212(a)(14) of the Immigration and Nationality Act, 8 U.S.C. 1182(a)(14) (the Act).

Under Section 212(a)(14) of the Act, an alien seeking to enter the United States for the purpose of performing skilled or unskilled labor is ineligible to receive labor certification unless the Secretary of Labor has determined and certified to the Secretary of State and to the Attorney General that, at the time of application for a visa and admission into the United States and at the place where the alien is to perform the work: (1) there are not sufficient workers in the United States who are able, willing, qualified and available, and (2) the employment of the alien will not adversely affect the wages and working conditions of United States workers similarly employed.

The procedures governing labor certification are set forth at 20 C.F.R. Part 656. An employer who desires to employ an alien on a permanent basis must demonstrate that the requirements of 20 C.F.R. Part 656 have been met. These requirements include the responsibility of the employer to recruit U.S. workers at the prevailing wage and under prevailing working conditions through the public employment service and by other reasonable means in order to make a good faith test of U.S. worker availability.

This review of the denial of labor certification is based on the record upon which the denial was made, together with the request for review, as contained in an Appeal File [hereinafter AF], and any written arguments of the parties. 20 C.F.R. § 656.27(c).

Statement of the Case

On September 18, 1985, Venture International Associates (Employer) filed an application for labor certification on behalf of John Charles Thompson (Alien). Employer seeks to hire Alien as the Executive Assistant to the Chairman of the Board. The primary responsibilities of this position include arranging all aspects of potential foreign investors' visits to the United States, advising Employer of aspects of protocol relating to "VIP's" and potential foreign investors, and marketing U.S. investments to worldwide clientele as well as seeking foreign investments for Employer. The requirements for the position include a bachelor's degree in business, finance, or commerce, and three years of diplomatic or protocol experience in a large corporation or institution.

Alien has a degree in commerce. He also gained nine years of experience as a protocol officer when he served as a Squadron Air Officer in charge of protocol for Canada. More recently, Alien acted as the Director of Protocol for Peterson Air Force Base in Colorado.

Certification was originally denied on February 14, 1986. (AF at 3) The job opportunity was classified under the Dictionary of Occupational Titles (D.O.T.) as "Sales Agent, Securities." (D.O.T. 251.157-010) The D.O.T. describes the specific vocational preparation as over two years up to and including four years. Certification was denied because Employer's job requirements exceed the D.O.T. requirements without proof, the Certifying Officer determined, that they arose from business necessity.[1]

Employer appealed on February 17, 1986. (AF at 1) An Administrative Law Judge (ALJ) considered the case and issued a remand order on September 10, 1986. (AF at 25a) The ALJ remanded the case to provide Employer the opportunity to establish business necessity for his requirement that applicants possess three years of protocol experience. He concluded that business necessity had been established for the bachelor's degree and for some extent of protocol experience but not for three years of such experience.

On remand, the Certifying Officer issued a Notice of Findings on October 30, 1986. (AF at 9a) Employer filed a rebuttal on December 4, 1986. (AF at 7a) On May 21, 1987 the Certifying Officer again denied certification on the grounds that Employer had failed to comply with various provisions of 20 CFR 656.21(b). On June 3, 1987 Employer sought review of the denial.

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[1] According to the Handbook for Analyzing Jobs (Department of Labor, 1972) a four year college curriculum, except liberal arts, counts as two years of specific vocational preparation. (p. 209) In the instant case, Employer is requiring a bachelor's degree in business, commerce, or finance and three years of protocol experience for a total of five years.

Discussion

On the first appeal the ALJ ruled that "even under the Ratnayake standard, the extent of the experience required must be shown to be reasonable." Consequently, Employer was required to explain why one or two years of protocol experience is not sufficient. With regard to this issue, Employer's rebuttal of December 4, 1986 simply asserted that its requirements pass the Ratnayake test of enhancing the quality of its business. (AF 8(a)) Putting aside the question of whether this test is correct, we find that the single conclusory assertion of Employer clearly is not an adequate response to the issue on which the case was remanded.

It may be conceded that, as a general proposition and within certain limits, the greater an employee's training and experience, the greater his value to a business. But the purpose of section 656.21(b)(2) is to keep a job opportunity's requirements down to those normally required, in order to make it accessible to the greatest possible number of U.S. workers. Consistent with this purpose, the reason for the remand was to give Employer an opportunity to explain why one or two years of protocol experience would not be sufficient, i.e., why three years of experience is necessary. The ALJ noted that four U.S. workers who had applied for the job and had been rejected for not meeting the 3-year requirement did, concededly, have some protocol experience. Employer has not provided the requisite explanation.

By reason of the foregoing, we are of the view that the Certifying Officer was correct in concluding that Employer has not complied with section 656.21(b)(2).

ORDER

The Certifying Officer's determination denying certification is affirmed.

NICODEMO DeGREGORIO
Administrative Law Judge

ND/tjp

Washington, D.C.